

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.1718 OF 2005

Gobind Mahal Co-operative Housing Society Ltd. ...Petitioner.

Vs.

Smt. Regena Fernandes.

...Respondent.

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Mr. Shyam Diwan i/b. M/s.Thakurdas & Madgaonkar for the
Petitioner.

Ms. Rekha Panchal for the Respondent.

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CORAM : [DR.D.Y.CHANDRACHUD](#), J.

August 31, 2005.

P.C.:

This petition is directed against an order of the Co-operative Appellate Court. The dispute that arose in the proceedings before the Co-operative Appellate Court was in respect of two issues; the first relating to the charging of interest at the rate of 21% per annum and the second relating to the allotment of car parking spaces in the premises of the Co-operative Society.

In so far as the first issue is concerned, Bye law 74 of the Bye-laws of the Society of 1971 provided that a member in arrears

after thirty days from the date of notice shall pay interest at 9 per cent per annum on the amount outstanding. On 20th May 1988, amended Bye-laws came into force and Bye-law 74 provides as follows :

“74. A defaulter member shall be required to pay simple interest at such rate as is fixed by the general body of the Society at its meeting, subject to the maximum of 21 per cent per annum, on the charges of the Society defaulted by a member, from the date the amount was defaulted till its payment.” (emphasis supplied).

The plain reading of the Bye-law would show that the Society is entitled to charge a maximum of 21% per annum by way of simple interest subject to the condition that the rate has to be fixed by the general body in its meeting. The Co-operative Appellate Court has noted in its order that no material was produced before it, to demonstrate that the general body has passed a resolution to charge interest at the rate of 21% per annum. Counsel appearing on behalf of the Petitioner fairly states that no material or resolution was produced before the Co-operative Appellate Court and that he would not therefore urge a submission before this Court that a resolution had been passed. In that view of the matter, both the Courts below were justified in coming to the

conclusion that the Society is entitled to charge interest at the rate of 9% per annum which was fixed by the Bye-laws as originally approved.

In so far as the issue of parking is concerned, it would appear that there are 34 flats in the building of the Co-operative Society. There are 24 open Car Parking spaces and 8 enclosed garages. Before the Co-operative Court, it was submitted on behalf of the Co-operative Society that there was no resolution for the allotment of parking spaces. The witness of the Co-operative Society in his cross-examination admitted that Garage Nos.2, 3, 7 and 8 were being put to use by the Secretary of the Society for commercial purposes. Three parking spaces were used by the Secretary and his family members. The order that has been passed by the President of the Co-operative Appellate Court is manifestly fair and just. The Learned Judge has clarified that if any member has purchased any enclosed garage as an independent unit or along with a flat from the builder, he can continue to use the garage for parking of cars. Any such member will also be entitled to participate in the allotment of a car parking space along with other members. Car parking spaces have to be allotted in

accordance with the provisions of Bye-law 82. Bye-law 82 inter alia provides that a member with a motor vehicle will be entitled to have a parking space. Normally a member is not eligible for more than one space under the stilts or a parking space. However, if any parking spaces remain unallotted for want of adequate applicants, a second or third parking space may be allotted to a member on a year to year basis. The provisions of Bye-law 82 have been made to ensure fair allotment of parking spaces which constitute a common amenity for members of a Co-operative Society. A member of a Co-operative Society cannot appropriate parking spaces to himself to the exclusion of the rest of the members. The directions issued by the Co-operative Appellate Court are fair and equitable and do not warrant interference under Article 227 of the Constitution . The petition is dismissed.

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